

**Office of the Standing Chapter 13 Trustee**

Thomas D. Powers, Trustee

State Bar No. 16218700

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE:

AMY GOLDBLATT HOWARD

Case #: 09-35705-SGJ-13

Hearing: 12/10/2009

Debtors

**TRUSTEE'S MOTION TO TRANSFER VENUE AND BRIEF IN SUPPORT**

TO THE HONORABLE BANKRUPTCY JUDGE:

COMES NOW Thomas D. Powers, Standing Chapter 13 Trustee, to file his Motion to Transfer Venue and Brief in Support, and would respectfully show the following.

1. The Debtor has filed a Chapter 13 bankruptcy case in the Dallas Division of the Northern District of Texas. For the following reasons, the case should be transferred to a district in which venue would be proper.

2. The Debtor's petition, schedules, and statement of financial affairs show that the Debtor's domicile and residence are not located within the Northern District of Texas. Furthermore, the Debtor does not have his or her principal place of business or principal assets in the Northern District of Texas.

3. Employment within the district does not qualify as "principal place of business" or "principal assets" for venue purposes. See, In re Henderson, 197 B.R. 147, 151 (Bankr. N.D.

Ala. 1996); In re Berryhill, 182 B.R. 29, (Bankr. W.D.Tenn. 1995); In re Petrie, 142 B.R. 404, 405 (Bankr. D. Nev. 1992); In re Oliver, 111 B.R. 540, 544 (Bankr D. Md. 1989).\*

4. Pursuant to 28 U.S.C. f 1408, therefore, venue is not proper in the Northern District of Texas. When venue is not proper, the Court must either dismiss or transfer the case to an appropriate district. See Fed. R. Bankr. P. 1014(a)(2), based on 28 U.S.C. f 1406. The Court may not consider any other factors, such as convenience of the parties, to determine to retain an improperly venued case. In re Columbia Western, Inc., 83 B.R. 660 (Bankr D. Mass. 1995); In re EDP Medical Computer Systems, Inc., 178 B.R. 57 (M.D. Penn. 1995); In re Mcall, 194 B.R. 590 (Bankr. W.D. Tenn. 1996); In re Peachtree Lane Associates, Ltd., 188

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\*The legislative history of the venue provisions for bankruptcy filings also shows that Congress did not intend to allow the debtor's place of employment to influence venue. With the enactment of the Bankruptcy Code in 1979, Congress also enacted 28 U.S.C f 1472 (now superseded). Section 1472 provided that venue was proper in a district "in which the domicile, residence, principal place of business, in the United States, or principal assets, in the United States, of the person or entity..." In re Vann, 3 B.R. 192, 193 n.3 (Bankr. E.D. Penn 1980). Section 1472 superseded Bankruptcy Rule 13-110(a), which provided that venue was proper in a district in which the debtor had "his principal place of employment, residence or domicile." Id. at 193; Barnes v. Whelan, 689 F.2d 193, 204 (D.C. Cir. 1982). "'Place of business', as a basis of venue prescribed by f 2a(1) of the act, was found to be inappropriate for the Chapter XIII wage earner so, 'place of employment' was substituted while retaining residence or domicile as the usual basis for venue." Id. (Citing Bankruptcy Act Comment to Rule 13-110).

Congress, however, did not include "place of employment" as a venue option when it enacted 28 U.S.C f 1472, even though it had been set out in the prior law (Rule 13-110). "In the absence of evidence to the contrary, ... we must assume that Congress was aware of Rule 13-110, and realized that section 1472 deleted 'principal place of employment' as a location for proper venue." Barnes, 689 F.2d at 204. Furthermore, when Congress enacted 28 U.S.C. f 1408, it again had the opportunity to include "place of employment" in the venue statute, but it did not.

It also appears that "principal place of business" is a term of art. "Courts generally held that a salaried employee did not have a 'place of business' where he was employed." Id. (citing Higgins v. State Loan Co., 72 App.D.C. 328, 114 F.2d 25 (1940) "It would seem reasonable to conclude that whatever meaning the phrase 'place of business' may have generally, as used in the Bankruptcy Act for jurisdictional purposes it means a place where the bankrupt has a business of his own.").

B.R. 815 (N.D. Ill. 1995); In re Berryhill, 182 B.R. 29 (Bankr. W.D. Tenn. 1995); In re Great Lakes Hotel Associates, 154 B.R. 667 (E.D. Va. 1992); In re Petrie, 142 B.R. 404 (Bankr. D. Nev. 1992); Matter of Sporting Club at Ill. Ctr., 132 B.R. 792 (Bankr. N.D. Ga. 1991); CMR, Inc. v. Tri-City Foods, Inc., 100 B.R. 51 (D.Kan. 1989); In re Pick, 95 B.R. 712 (Bankr. D.S.D. 1989). A different reading of the venue statutes would promote forum shopping in the filing of bankruptcy cases.

WHEREFORE, PREMISES CONSIDERED, the Trustee prays for an order transferring this case to the Eastern District of Texas, Sherman Division, and for any other just and proper relief.

Respectfully submitted,

/s/Thomas D. Powers  
Thomas D. Powers, Trustee  
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CHAPTER 13 TRUSTEE  
125 E. John Carpenter Freeway  
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#### NOTICE OF HEARING

Please take note that a hearing has been scheduled for 12/10/2009. A pre-hearing conference will be held on that date at 8:30 a.m. by the Trustee at 125 E. John Carpenter Freeway, Suite 1100, Irving, Texas. Any objections to the proposed relief not resolved or defaulted at the pre-hearing conference will be heard by the Court at 2:00 p.m. on the same date on the 14th Floor, 1100 Commerce St., Dallas, Texas. Parties are not required to attend the pre-hearing conference unless they oppose the relief requested

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Case # 09-35705-SGJ-13  
Debtor(s) AMY GOLDBLATT HOWARD

### Certificate of Service

I hereby certify that a copy of the foregoing "Trustee's Motion to Transfer Venue and Brief in Support" was served on the following parties at the addresses listed below by United States First Class Mail.

DEBTOR(S): AMY GOLDBLATT HOWARD, 5783 VERSAILLES AVENUE, FRISCO TX, 75034

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Dated: 10/27/2009 By: /s/ Thomas D. Powers

DEBTOR(S)

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